IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

3:16-cv-00403-RJC (3:09-cr-00106-RJC-1)

<u>ORDER</u>

THIS MATTER is before the Court on consideration of the Respondent's motion to stay the disposition of Petitioner's § 2255 Motion to Vacate. (Doc. No. 4: Motion to Stay). Petitioner does not oppose the motion.

In his § 2255 Motion to Vacate, Petitioner challenges the enhancement of his sentence pursuant to § 2K2.1 of the <u>U.S. Sentencing Guidelines Manual</u>, and he relies on the Supreme Court's decision in <u>United States v. Johnson</u>, 135 S. Ct. 2551 (2015), in which the Court struck down the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), after concluding that it violated due process because it was unconstitutionally vague.

In the motion to stay, Respondent notes the Supreme Court has granted a petition for a writ of certiorari in <u>Beckles v. United States</u>, No. 15-8544, to consider whether the <u>Johnson</u>

Court's conclusion regarding the residual clause of the ACCA should apply to the residual clause of the definition of "crime of violence" that is contained in the career offender guideline in USSG § 4B1.2, and if so, whether <u>Johnson</u> should apply retroactively on collateral review. The Court is also considering the issue of whether possession of a sawed-off shotgun is a crime of

violence under the Guidelines. (Motion to Stay at 1-2).

Because resolution of the issues involved in the <u>Beckles</u> case may have a bearing on the disposition of the issues in Petitioner's case, the Court will grant Respondent's motion.

IT IS, THEREFORE, ORDERED that Respondent's motion to stay is GRANTED, (Doc. No. 4), and Respondent shall have 60-days from the date the Supreme Court renders its decision in <u>Beckles v. United States</u> to file a response to Petitioner's § 2255 Motion to Vacate.

SO ORDERED.

Signed: September 22, 2016

Robert J. Conrad, Jr.

United States District Judge